IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 395 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAFIK KASAM @ HAKUDI JAGAMAGIYA - Orig.Accused No.1
TUI @ HUSEIN KASAM JAGAMAGIYA - Orig.Accused No.2
-Appellants

Versus

STATE OF GUJARAT

Appearance:
MR YOGESH S LAKHANI for Appellants - Accused
MR KG SHETH, APP for Respondent - State

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 31/08/2001

JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The appellants - accused have preferred this appeal against the judgement and order dated 10th March 1992 of the learned Sessions Judge, Amreli in Sessions Case No. 20 of 1990, by which the accused No.1 (present appellant No.1) - Rafik Kasam alias Hakudi Jagamagiya was convicted for the offence under section 120-B read with section 302 of the Indian Penal Code and sentenced to imprisonment for life and payment of fine of Rs.1,000=00, in default to suffer simple imprisonment for one year, and the accused No.2 (present appellant No.2) - Tui alias Husein Kasam Jagamagiya was convicted for the offence under section 302 of the Indian Penal Code for intentionally causing death of Jahangir and sentenced to imprisonment for life and a fine of Rs.1,000=00, in default of payment of which, to suffer simple imprisonment for one year, and also convicting him for the offence under section 307 of the Indian Penal Code by attempting to cause murder of Jamalbhai and sentenced to suffer rigorous imprisonment for seven years and a fine of Rs.500=00, in default to undergo simple imprisonment for six months. Both the accused were also convicted for the offence under section 135 of the Bombay Police Act read with section 120-B of the Indian Penal Code, and sentenced to simple imprisonment for four months and a fine of Rs.100=00, in default to suffer simple imprisonment for one month. All the sentences were directed to run concurrently.

2. The prosecution version was that, while the accused No.1 - Rafik Kasam alias Hakudi Jagamagiya was in the Amreli jail, he wrote an inland letter to Jahangir on 26th October 1989, which was hand-delivered on that day to Jahangir, in which he had threatened Jahangir that he would kill him within a couple of months. He had asked Jahangir to come with a surety for his bail on the next date of the hearing of his case, which was 27th October 1989. That inland letter was dictated by Hakudi through a co-prisoner Sanjay Ghadi. On 27th October 1989, the accused No.1 - Hakudi gave a postcard written by him, article 8, in the early morning to constable Anil who was going home after his night duty, asking him to give it to Jahangir. In that postcard, Hakudi recorded having written the earlier inland letter in anger and implored Jahangir to provide for a surety for his bail. On 9-11-1989, Hakudi was released on bail. The incident occurred on 27-11-1989 at about 2.30 p.m. In the earlier part of that day, the accused No.1 - Hakudi had gone to the house of Jahangir and from outside his house, he had talked to him and thereupon Jahangir told his wife

Roshanbanu that he will go with Hakudi to placate him as he was angry over him and will use good offices of the leaders to compromise with him. He also told her that he will send vegetables from the market. Thereafter, he did send the vegetables and then, while he was sitting on a `lari' in Baharpara chowk with his friends Manu Mohan and Jamal, who had also come there, the accused No.2 Tui alias Husein Kasam Jagamagiya came suddenly with an open knife and gave a knife blow on the chest of Jahangir piercing his heart. At that time, Jahangir alongwith Manu Mohan and Jamal were sitting on a `lari' which was lying near the road. When the accused No.2 Tui gave a blow to Jahangir, Jamal got down from the `lari' and tried to intervene and at that time, the accused No.2 Tui gave a knife blow to him on the left side of his back parallel to costal margin which was an incised wound upto bone deep. The accused No.2 Tui then started running away and Jamal started chasing him. The accused No.2 Tui, however, was lost sight of in view of the crowd near the Jai Hind Cinema Theatre which was at a short distance from the scene of offence. Manu Mohan tried to hold Jahangir. According to the prosecution, one constable Gigabhai who was near the Jai Hind Theatre had seen the accused No.2 Tui running with a knife in his hand and, therefore, he had started chasing him, but the accused No.2 was lost sight of due to a crowd near the theatre. This constable was told by Jamal that the accused No.2 Tui had assaulted Jahangir. Jamal came back where Jahangir was lying. According to the prosecution, before dying, Jahangir had stated that, because of the quarrel with the accused No.1 - Hakudi, the accused No.2 - Tui (who was his brother) had taken revenge against him. Jahangir was then taken to the hospital by Manu Mohan and Jamal, where he was declared dead, and Jamal was given treatment. The executive magistrate was called and Jamal's dying declaration exh.22 was recorded, in which he had narrated the attack by the accused No.2 Tui on Jahangir at the aforesaid time when they were sitting on a `lari'. His FIR exh.27 was also recorded.

3. As per the Charge exh.2, both the accused stood trial on an allegation that the accused No.1 - Hakudi and the accused No.2 - Tui had conspired to kill Jahangir, and on 27-11-1989, the accused No.2 caused death of Jahangir as a result of such conspiracy by inflicting a knife blow on the vital part of his body, and that they had committed the offence under section 302 read with section 120-B of the Indian Penal Code, and the accused No.2 attempted to murder Jamal Hasan by giving him a knife blow causing grievous hurt to him. According to the prosecution, the muddamal knife by which the accused

No.2 - Tui had given blows to Jahangir and Jamal was discovered at his instance and was having blood stains thereon of the blood group of both these persons, namely `A' as well as `B' groups (`A' of Jamal and `B' of Jahangir).

3.1 Both the accused pleaded not guilty. The defence version suggested in the cross-examination of the injured witness Jamal was that, around the time of the incident, Jahangir had asked Jamal Hasan and Rahim Hasan to go with him, because, he wanted to teach a lesson to Hakudi and he had sent Rahim Hasan to call Hakudi at the Jalaram Pan House where the incident occurred. Hakudi was not in his house, but alongwith Rahim, brother of Hakudi, Ibrahim had come. There was a quarrel between Ibrahim and Jahangir with exchange of abuses. According to the defence version, at that time, people of Khatki community gathered from the nearby area and one of the persons from the crowd had given a knife blow to Jahangir, as a result of which Jahangir fell down at the spot which was 22 feet away from Dilkhush Cycle Stores. According to the defence version suggested to witness Jamal, when he started running and was about 30 to 35 feet from this spot, somebody gave a knife blow to him also, and that it was not known as to who had given that knife blow. Thereafter, when the constable Gigabhai came there, the crowd dispersed. Ibrahim is examined in support of the defence version.

4. The trial Court, on the basis of the material on record, came to a finding that the death of Jahangir was homicidal. It was also held that the accused No.1 had dictated the inland letter, muddamal article 7 to Sanjaykumar Ghadi, whose handwritings were proved from the deposition and opinion of the handwriting expert, and that letter, addressed to Jahangir Abdulla, in clear terms contained threat of murder to Jahangir. Though the letter bore the date 26-10-1986, it was in fact 26-10-1989 and the year 1986 was written by mistake. The incident took place on 27-11-1989 and Jahangir was killed, pursuant to the conspiracy, by the accused No.2 Tui. The accused No.1 had come to the house of Jahangir in the morning of the day of the incident and Jahangir was killed in the afternoon by his brother, the accused No.2. It was held that all the facts collectively proved that the criminal conspiracy was hatched by the accused persons to murder Jahangir Abdulla. The Court relied upon the version of Jamal, who was the injured witness and held that his evidence was corroborated by Man Mohan and Gigabhai. It was held that the injury on Jamal was clearly an attack on his life. The Court rejected the

evidence of Ibrahim examined on behalf of the accused as a defence witness, holding that his evidence appeared to be a tutored one.

5. The learned counsel appearing for the two appellants persons submitted that there was no evidence to show that there was any agreement between the accused No.1 and the accused No.2, and in absence of proof of such agreement, conspiracy between them was not proved. It was contended that the two letters, articles 7 and 8, did not bear any endorsement of the jail authority and the jailer in his deposition exh.28 had stated that no prisoner was permitted to send letters directly. Therefore, the story of the prosecution that these letters were sent by Hakudi from the prison was doubtful. It was also contended that the scribe of the inland letter, article 7, Sanjay Ghadi in his deposition exh.33 did not support the prosecution case, and has stated that he did not write this letter. Therefore, the comparison of the handwriting of the inland letter, article 7 with the specimen handwritings of Sanjay Ghadi was futile. Moreover, dictation by Hakudi of the contents of this letter to Sanjay Ghadi was not proved. It was submitted that the sweeper Bavabhai, in his deposition exh.31, did not support the prosecution and denied having delivered the letter, article 7, to Jahangir. It was then argued that the specimen writings of the accused No.1 - Hakudi with which the disputed writings in the postcard, article 8, were compared, were not proved since the panch witnesses Madhavji, exh.49 and Yusuf exh.34 did not support the prosecution case. It was argued that the version of police constable Anil that he had delivered the postcard, article 8, to Jahangir after it was given to him in the morning by the accused No.1 - Hakudi on 27-10-1989, was not reliable as no police constable with 18 years of service would behave in such a way contrary to the jail regulations. Moreover, Anil's statement was recorded only on 30-11-1989. It was then argued that, even if the postcard article 8 has been proved to have been written by Hakudi, it did not show anything incriminating. The counsel further contended that the discovery of knife by the accused No.2 was of no consequence, because, the place from where it was discovered was open and accessible to all and the site was shown by the PSI. According to him, there was no evidence for concealment of the weapon by the accused. As regards the finding of the blood stains on the muddamal knife of the two groups, namely `A' and `B', it was contended that it was not possible that blood of both Jahangir and Jamal would be detected on the knife even if the injuries were caused by the same knife to them,

because, when subsequent injury is inflicted, the blood stains already on it would get mingled with the blood stains caused due to the subsequent injury. It was contended that the evidence of injured witness Jamal was not reliable, because, he had not given the full name of the accused No.2 in his statement before the executive magistrate exh.22 and had described him as "Tui Khatki". The fact that the full name of the accused No.2 was given in the FIR exh.27, but was not given in the statement exh.22 recorded by the executive magistrate would, according to the learned counsel, show that the FIR was not given by Jamal and might have been given by Manu Mohan. The statement exh.22 of Jamal was recorded after more than two hours of the lodging of the FIR. It was contended that Jahangir had admitted in his cross-examination that he knew the accused No.2 by his name and his father's name for last three years, which would suggest that, till his statement exh.22 was recorded by the executive magistrate, Jamal was not knowing as to who was the assailant, otherwise he would have given his full name. It is also argued that the presence of pool of blood at two spots on the road created doubt over the prosecution version. It was submitted that there were no blood marks noticed near the `lari' where the incident was said to have taken place. It was submitted that panch Sattar exh.47 has stated that there were no blood marks near the place of offence, and therefore, this created a doubt over the prosecution version. The learned counsel also argued that there was no enmity between the accused persons and the deceased and there was no reason for the accused No.1 to kill Jahangir. Moreover, there was no quarrel between the accused No.2 and Jahangir at any time. They belonged to different communities and there was no business rivalry between them. On the motive aspect, it was submitted that the prosecution version was concocted, because, in the FIR exh.27, Jamal stated that there was exchange of words between Jahangir and the accused No.1 - Hakudi and therefore, he was assaulted by the accused No.2 - Tui. In the statement exh.22, however, Jamal had said that he did not know why the incident occurred, while before the Court, he stated in paragraph 3 of his deposition that, on the issue of receiving letters from Hakudi, Jamal and Sattar had gone to scold the mother of the accused No.1 Hakudi and therefore, the incident occurred. It was further argued that, as per the medical evidence, the deceased would not have been in a position to speak after the injury and therefore, the prosecution version that, before dying, Jahangir had said that he was assaulted by the accused No.2, because, the accused No.1 had a quarrel with him, was not reliable. It was argued that merely

because the FIR was promptly lodged, it cannot strengthen the prosecution case which should stand or fall on its own merit. It was contended that the deposition of Manu Mohan who is said to have witnessed the incident, could not be relied upon, because, he had an enmity with the accused No.1 and 2 as his brother was, according to him, killed by them and the attempt on the life of his other brother was made by them, and that dispute was going on with these accused persons since ten years. It was also contended that the conduct of Giga Jetha, the constable, who is said to have seen the accused No.2 running with open knife after the incident, was highly doubtful and did not inspire confidence. Though he knew the accused No.2 and had seen him running with a knife and came to know that Jahangir was injured by him, he still reported the incident only as a `maramari', and did not inform anyone till his statement was recorded on the next day. It was also submitted that Jamal was a chance witness, because, his son was sick and he was expected to be sitting in the market place with Jahangir and Manu discussing the results of the elections. It was also submitted that, from the evidence of the medical expert, it appears that Rahim had taken Jamal to the hospital which fact was concealed by the prosecution. Moreover, the rickshaw driver of the rickshaw in which Jahangir, Jamal and Manu went to the hospital was not examined. The `lari' on which these three were sitting prior to the incident was not found, and this was described as a major infirmity in the prosecution version. Manu Mohan was also assailed as a chance witness and as an interested witness in whose deposition, there was a material contradiction in form of an omission of his not having said in the police statement about the deceased having made a statement before him before dying that, because of quarrel with Hakudi, his brother, the accused No.2 had assaulted him. It was submitted that if this witness had held Jahangir allthroughout, he was placed in the auto-rickshaw, two abrasions would not have been found on Jahangir's body. Moreover, the clothes of this witness were found to be having blood of group `A' which was of Jamal, while if he were holding Jahangir, the blood would have been of group `B', which was of Jahangir. The learned counsel finally argued that the prosecution had not been fair in this case, because, the material witness Yogesh and Asraf whose statements were recorded, are not examined and the finding of blood of `A' group on the clothes of Manu Mohan as well as the finding of blood on the clothes of the accused No.2, on which no blood was noticed when they were seized, under a panchnama at the time when they were produced by the mother of the accused No.2, indicated a possibility of the police having

planted the evidence by sprinkling blood of `A' group on the clothes of Manu Mohan which was of the accused No.2. It was also contended that the constable Gigabhai in his cross examination had referred to some panchnama by PSI Chauhan in which there was a reference to Asraf and Yogesh, but no such panchnama was forthcoming.

5.1 The learned counsel in support of his contentions relied upon the following decisions :

[a] The decision in Saju v. State of Kerala, reported in (2001) 1 SCC 378 was cited for the proposition that, to prove the charge of criminal conspiracy, the prosecution is required to establish that two or more persons had agreed to do or caused to be done, an illegal act or an act which is not legal, by illegal means, and that, to attract the applicability of section 120-B, it has to be proved that all the accused had the intention and that they had agreed to commit the crime. In the same decision, it was also held that conspiracy is hatched in private and in secrecy for which direct evidence would rarely be available. It is also not necessary that each member to a conspiracy must know all the details of the conspiracy. It has to be established that the accused charged with criminal conspiracy had agreed to pursue a course of conduct which he knew was leading to the commission of a crime, by one or more persons to the agreement, of that offence. Besides the fact of agreement, the necessary mens rea of the crime is also required to be established.

[b] The decision of the Supreme Court in Param Hans Yadav v. State of Bihar, reported in AIR 1987 SC 955 was cited for the proposition that if the prosecution relies upon circumstantial evidence, a clear link has to be established and the chain has to be completed, otherwise it would indeed be hazardous to accept a part of the link as a complete one and on the basis of such incomplete evidence, the allegation of conspiracy cannot be accepted.

[c] The decision of the Supreme Court in Shankarlal Gyarasilal Dixit v. State of Maharashtra, reported in AIR 1981 SC 765 was cited for the proposition that falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false

plea by defence can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused.

[d] The decision of the Supreme Court in B.N.Singh v. State of Gujarat, reported in AIR 1990 SC 1628 was cited to point out that, in a case where the High Court had held that the evidence of a prosecution witness is corroborated by the circumstance namely that the complaint was given within 20 minutes, it was held that such circumstance only at the most may establish the place and time of the occurrence and the nature of weapons used, but the corroboration should be in respect of the complicity of the accused and incriminating.

[e] The decision of the Supreme Court in Nanhku Singh v. The State of Bihar, reported in AIR 1973 SC 491 was cited for the proposition that where there were ill-feelings between the accused side and the witnesses, the evidence of eye witnesses has to be scrutinised carefully. In that case, the Supreme Court observed that, both the trial Court as well as the appellate Court were aware of the need to exercise caution and after weighing the evidence carefully and giving the utmost benefit to the accused nonetheless came to the conclusion that the offence against both the appellant and the other accused had been established.

[f] The decision of the Supreme Court in Chandrakant Chimanlal Desai v. State of Gujarat, reported in XXXIII (1) GLR 554 was cited for the proposition that the evidence of the handwriting expert was not decisive unless the prosecution version inspired confidence. In that case, the High Court had, as observed by the Supreme Court, made confessional statement of the accused No.1 as the basis and had then gone in search for corroboration. In that context, it was observed that, by relying on the opinion of the handwriting expert, the High Court concluded that it lent corroboration to the confession, thus treating the confession as the basic document around which the rest of the evidence must circle.

[g] The decision of this Court in State of Gujarat v. Mohmed Fariq Haji Mohmad, reported in 2000 (2)

GLH (UJ) 9, was referred to for the observations in paragraph 9 of the judgement which has been reproduced in the said paragraph that, if the prosecution relies on blood marks on muddamal and also gets the blood extracted, it is incumbent upon the prosecution to show to the court what quantity of blood was extracted from the dead body and from the accused's body and whether the same quantity was sent to the laboratory for analysis, and if before sending the same, some amount thereof was used, it must be shown for what purpose the same was used; or why the blood less in quantity then collected was sent to laboratory. It was observed that, when on that point, the evidence is not led, the possibility of "any mischief having been played by the police agency cannot be ruled out and this possibility points to the innocence of respondent casting clouds of suspicion on the credibility of entire wrap and woof of prosecution's story."

6. The learned Additional Public Prosecutor submitted that there was no reason to discard the version of the injured witness Jamal who was a disinterested witness and had no reason to falsely implicate the accused No.2, who had caused an injury to him immediately after giving a knife blow to Jahangir. His evidence was fully corroborated by the medical and other evidence. On the question of conspiracy, the learned counsel submitted that the letters, articles 7 and 8, are proved to have been delivered to Jahangir and the handwriting of the inland letter article 7 was by expert opinion proved to be that of Sanjay Ghadi, who was the inmate in the prison with Jahangir. There was no reason to write such a letter of his own on the part of Sanjay Ghadi. The post-card article 8 was delivered by the police constable Anil who had stated that it was given to him in the morning after his duty hours by the accused No.1 - Hakudi for being delivered to Jahangir and he in fact delivered it to Jahangir. He had read the post-card and in his deposition has asserted that it was the same post-card which was shown to him. Both the letters articles 7 and 8 were preserved by Roshanbanu, wife of Jahangir. It was argued that, on the day of the incident, the accused No.1 Hakudi had in fact gone to the house of Jahangir who went alongwith him after telling his wife Roshanbanu that he would try to pacify Hakudi by using the good-offices of the leaders of the community. Soon thereafter, at about 2.30 p.m., while he was sitting alongwith his friends Manu Mohan and Jamal, the accused No.2 suddenly came and gave a knife blow to him and then to Jamal and ran away.

It was submitted that the entire chain of circumstances showing conspiracy was clearly established and therefore, the accused No.1 has rightly been convicted for the offence under section 302 read with section 120-B of the Indian Penal Code and the accused No.2 for the offences under sections 302 and 307 of the Indian Penal Code. The learned counsel submitted that the reasoning and findings of the trial Court are based on the evidence on record. He also submitted that the circumstantial evidence of discovery of knife which was blood stained clearly implicated the accused No.2 and corroborated the prosecution witness. He argued that merely because the blood group `A' was detected on the clothes of Manu Mohan, it cannot be inferred that the police had planted the blood on his clothes. This is because even Jamal was injured and was profusely bleeding and his blood was of `A' group and he had travelled in the auto-rickshaw in which Jahangir was taken by Manu Mohan to the hospital. The learned counsel in support of his contentions relied upon the decision of the Supreme Court in State Government of NCT of Delhi v. Sunil and another, reported in (2001) 1 SCC 652 for the proposition that seizure of bloodstained clothes need not be attested by any independent witnesses, and that as a proposition of law, the presumption should be that official acts of police have been regularly performed.

7. We straightaway proceed to consider the version of the injured eye witness Jamal. In his deposition exh.26, Jamal has stated that the incident occurred on 27-11-1989 around 2.00 to 2.30 p.m. At that time, he had gone to Baharpura Chowk, and Jahangir and Manu Mohan were sitting on a `rekadi' (i.e. `lari') near Jalaram Pan House. Both were his friends and therefore, he also went and sat there. For about five minutes, they talked about the election and then the accused No.2 - Husein Kasam came from the direction of the tower and straightaway gave a knife blow on the left side of the chest of Jahangir. This witness, therefore, got down from the `rekadi' and started intervening. Therefore, the accused No.2 Husein Kasam gave a knife blow to him on the left side of his back. Thereafter, he had run away. This witness chased him. There was a crowd near Jai Hind Talkies in which the accused No.2 vanished. He has stated that the other name of Husein Kasam is `Tui'. This witness had known him since 2 or 3 years prior to the incident. He also knew the brother of the accused No.2 - Rafik Kasam. He identified the accused No.2 Husein Kasam alias Tui in the Court and also the accused No.1 Hakudi. He has stated that while he was chasing the accused No.2, constable Gigabhai also had started running

and on being asked as to what happened, he told him that the accused No.2 had given a knife blow to Jahangir and was running away, and that he had given a knife blow to him also. Thereafter, he was told by Gigabhai to go to the hospital and take Jahangir also. When he and Manubhai were getting into the auto-rickshaw of one Pinjara, Jahangir had stated that, because of the quarrel between him and Hakudi, Tui had taken the revenge. Thereafter, Jahangir stopped speaking. He and Manubhai put Jahangir in the rickshaw and both of them also sat in it and went to the hospital where the doctor declared Jahangir dead and he was sent to the ward for treatment. Jahangir's body was sent for post-mortem examination. They had reached the hospital around 3.00 O'clock. He identified the knife, muddamal article No.17 as the one with which the blows were given by the accused No.2 Tui to Jahangir and him. He stated that the accused No.2 had attacked him, because, he tried to intervene when Jahangir was being given a blow by him. He also stated that when the accused No.1 was in jail, Jahangir had received an inland letter and a post-card, giving threats to him and in that connection, he alongwith Sattar Suleman had gone to meet the mother of the accused No.1 to scold them and that was another reason why he was assaulted. His complaint exh.27 was recorded at 3.15 p.m. after he went to the hospital. In the evening at 5.30 p.m., the executive magistrate had recorded his statement exh.22. Since the injured witness survived, it cannot be described as a dying declaration and it was just a statement recorded by the executive magistrate though described as a dying declaration in the record. It is clear from the contents of the FIR exh.27 and the dying declaration exh.22 that, on all material particulars of his version, he has been fully corroborated. The statement before the executive magistrate exh.22 was meant to be a dying declaration, and not a detailed account of the entire version. It clearly refers to Tui Khatki as the person who had come with a knife and caused injury to Jahangir, and thereafter injured this witness also at the time of the incident. This witness has categorically stated that the accused No.1 was known to him as `Tui'. He had lodged the FIR exh.27 in which the detailed name of the accused No.2 was given and nothing adverse can be inferred from the fact that the accused No.2 was described by his nickname in the statement exh.22 recorded by the executive magistrate. Since he was the injured eye witness, it was but natural for the police to record his FIR exh.27, which was done soon after the incident. The element of promptness in recording the FIR cannot be ignored though ofcourse the prosecution has to prove its

case and mere promptness of FIR would be no ground to accept the prosecution version. But the fact remains that the FIR exh.27 lodged by Jamal had given all the particulars of the incident which were mentioned by him before the Court. It was stated that, while he alongwith Jahangir and Manubhai were sitting on a `lari' near Jalaram Pan House at about 2.30 p.m. on the day of the incident, the accused No.2 Khatki Husein Kasam alias Tui had come near them and he had straightaway given the knife blow on the chest of Jahangir and when he got up, he was also given a knife blow by Husein Kasam alias Tui on the left of his back. It was a big knife. He had stated that Jahangir was bleeding from his injury on the chest and Manubhai was trying to hold him, but he fell down. He had also stated that, after giving the knife blow, the accused No.2 Husein Kasam alias Tui had started running in the direction of Jai Hind Talkies. At that time, constable Gigabhai had also reached there and helped them in going to the hospital. It is clear even from the FIR that the accused No.2 was also known by his nickname `Tui'. In the statement of Jamal recorded by the executive magistrate at exh.22, he had said that he was given a knife blow by Tui Khatki at about 2.30 p.m., opposite Baharpura Chowk. He had stated that when Jahangir was given the knife blow by Tui Khatki, and he and Manubhai went to save him, he was given the knife blow. He has also referred to the presence of constable Gigabhai. He had stated that he had no dispute with the accused No.2, and that he was given the knife blow because he tried to intervene for saving Jahangirbhai when Jahangirbhai was given the blow. He has also stated that, after giving the knife blow to him, the accused No.2 had run away and thereafter, he was brought to the hospital by Manu Mohan. It will be seen that he was answering to the questions which were posed to him by the executive magistrate and was not narrating the entire incident which he had narrated in the FIR, but on the material aspects of his version, this statement fully corroborates him. Jamal's lengthy cross-examination does not at all affect his stand about the involvement of the accused No.2 in causing the fatal injury to Jahangir and the grievous injury to him at the time and place of the incident. Merely because he was involved in some prohibition and gambling cases, his evidence cannot be discarded. He cannot be said to be a chance witness, because, he has asserted in the cross-examination that he and Jahangir used to meet almost daily. It is but natural that when he saw Jahangir and Manubhai who were sitting on a `lari' on a day when election results were being declared, he would go and sit with them to chat. According to him, while they were talking about the

election results, the incident occurred within five minutes. There is no merit in the comment made on behalf of the accused persons that when his son was sick, this witness would not be sitting with his friends to chat about elections. He had already taken his son to Dr. Soni at 12 O'clock noon where he had met Jahangir and thereafter, he had taken his son to the Pathologist's Laboratory. It is only after leaving his son at home, as he had to purchase medicines, he had gone to the bazar chowk where he saw his friends Jahangir and Manubhai sitting on the `lari'. He therefore sat with them and as stated by him in paragraph 7, before he could go to purchase medicines, the incident occurred. In paragraph 8 of his deposition, he has accepted the suggestion in the cross-examination that he knew that `alias' name of the accused No.2 was Tui. He has denied the suggestion that Ibrahim, the brother of the accused persons, was known as Tui. On a close scrutiny of the deposition of this witness and keeping in mind all the comments which have been made by the learned counsel over his deposition, we are of the view that this injured witness Jamal can be safely relied upon for holding that the accused No.2 had come with a knife on 27-11-1989 at 2.30 p.m. at the place where Jahangir was sitting with him and Manubhai, and had straightaway given a knife blow on the chest of Jahangir, which caused the fatal injury that resulted in his death and when Jamal tried to intervene, he also gave a knife blow to Jamal on the left of his back. His version of injury to Jahangir and himself is fully corroborated by the medical evidence.

8. The deposition of Jamal establishes the presence of Manubhai and therefore, despite there being some enmity with Manubhai and the side of the accused, we hold that he was indeed present at the time of the incident.

9. The narration by Manubhai in his deposition exh.30 of the incident fully supports the prosecution version. According to Manubhai, on 27-11-1989, when he came to the Chowk after meeting his mother, he saw Jahangir and he met Jahangir and they sat on a `lari' and were chatting around 2.30 p.m. and within five minutes thereafter, Jamal also came there and sat on the `lari'. While they were talking, the accused No.2, whom he identified in the Court and gave his name as Husein Kasam alias Tui, came and gave a forceful knife blow to Jahangir on the left side of his chest. When Jamal tried to save Jahangir, the accused No.2 gave a knife blow to Jamal on the left side of his back and thereafter, he ran away towards Jai Hind Talkies. Jamal chased him. Police constable Gigabhai also chased him. After 2 to 4

minutes, Jamal came back. Constable Gigabhai told them to go to the hospital. He and Jamal, therefore, made Jahangir sit in the auto-rickshaw. Jahangir had said that, because of the quarrel between Hakudi and himself, Hakudi's brother had attacked him. They reached the hospital at 2.45 p.m. and the doctor declared Jahangir dead. This witness was standing near the post mortem room. Jamal was shifted to Ward No.6 for treatment. At that time, Jahangir's widow Roshanbanu came and went in the post mortem room and when she came out, he had told her about the incident. On this part of the evidence, he is supported by the deposition of Roshanbanu. This witness has stated that the inland letter and the post-card articles 7 and 8 which were received a couple of days before the Diwali by Jahangir, were read over to him by Jahangir and these letters contained a threat to Jahangir. This witness identified the muddamal article No.17 as the knife, by which the accused No.2 had given blows to Jahangir and Jamal. The statement of this witness was recorded by the police in the evening at about 5.30 p.m. at Baharpura police chowky. He had shown the scene of offence to the panchas when the panchnama of the scene of offence exh.48 was drawn. As per that panchnama exh.48, there was a kutcha road of 2 feet to the east of the `lari' and 5 feet to further east on the tar road, there was a patch of dried blood which was seized in presence of the panchas. At 33 feet away from this spot in the direction of Jai Hind Talkies and 20 feet away from Jalaram Pan House, there was another patch of dried blood on the tar road, from where the dried blood and bloodstained earth were seized. The map exh.25 is not on scale and this is why the length of the line showing the distance of 5 feet from the `lari' to the first mentioned patch of blood on the tar road appears to be equal to that of the line showing distance of 22 feet between Dilkhush Cycle Stores and that spot. Since the map is not on scale, only writing is to be seen for ascertaining the distance and not the length of the line and therefore, there is no substance in the contention raised on behalf of the accused that the spot where the blood was found was 22 feet away from the `lari' when the map exh.25 specifically records both in figures and words that it was 5 feet away from the `lari', which fact is also in terms recorded in the panchnama exh.48. Therefore, the attempt of the defence version to shift the scene of offence from near the `lari' to somewhere else is baseless. As soon as Jahangir was given a blow, he fell down near the `lari' and the distance where the blood of `B' group which was of Jahangir had fallen, was 5 to 7 feet from the `lari' as per the panchnama exh.48 and as per the distance

written in the map exh.25.

9.1 In his cross-examination, Manubhai has stated that before the incident, they were discussing about the election, because, at that time, counting of ballot papers was going on. In his laborious cross-examination, nothing is brought out which can create any doubt over his version about the manner in which the incident took place. He has admitted that, in the year 1981, his brother Lalji was murdered and there was a prosecution filed against three persons, including the accused No.1 Hakudi. He has also admitted that, in the year 1982, both the present accused persons were prosecuted for attempting to murder his brother, Jayantibhai. There is no doubt that this witness was an interested witness and his evidence is to be closely scrutinised. We, however, do not rely solely on the testimony of this witness. As held above, the prosecution version is fully established as regards the attack by the accused No.2 in the deposition of Jamal and the version of this witness about the manner in which the incident took place appears to be reliable. He was a friend of Jamal and therefore, there is nothing unusual if Jahangir had read out the letters articles 7 and 8 to him. In paragraph 8 of his deposition, he states that he does not remember as to what was written in the post-card. Obviously, he cannot be expected to reproduce the contents of the post-card after such a long time. In paragraph 3 of his deposition, he had generally stated that he was read over the inland letter and the post-card and when shown the muddamal articles 7 and 8, he identified them as the letters which were read over to him. These two letters came from the custody of Roshanbanu, who had kept them safe, as deposed to by her, after Jahangir had given them to her. Since the letters in fact remained with Roshanbanu after they were received by Jahangir, there was no reason for this witness to concoct any version in respect of those letters. Since he was close friend of Jahangir and the matter related to threat having been given to Jahangir, there was nothing unusual if Jahangir confided in this witness. This witness has stated that the deceased Jahangir had not fallen on the ground, and that he was holding him all the time till he was placed in the rickshaw. But on that aspect, the version of constable Gigabhai and Jamal is different, and according to them, Jahangir had fallen down. The pool of blood spread over circumference of one-half foot, as stated in the panchnama of the scene of offence exh.48 shows that Jahangir must have fallen down. The omission in his police statement that Jahangir had stated that, because of the quarrel with Hakudi, the accused No.2 had attacked

him is proved and, we would not place reliance on that part of the deposition of this witness. However, an omission on one aspect cannot falsify the witness on all aspects, especially when the injured witness Jamal has proved to be a trustworthy witness and is corroborated by the medical and other evidence.

10. Constable Gigabhai, who was near the Jai Hind Talkies and is said to have seen the accused No.2 running with a knife in his hand on the road and his having chased him when Jamal was chasing the accused No.2, has in his deposition exh.59, stated that around 2.30 to 2.45 p.m. on 27-11-1989, he was on duty at Baharpura police chowky and on hearing shouts, he and other two constables came out and he saw that Khatki Tui alias Husein Kasam (the accused No.2) was running in the direction of Jai Hindu Talkies with a knife in his hand. He, therefore, started chasing him. Jamal Hasan while chasing the accused No.2 told him about the incident. There was a crowd near the Jai Hind Talkies, because, it was show time. The accused, therefore, vanished beyond their sight. He therefore returned to the place near Jalaram Pan House where Jahangir was lying profusely bleeding and writhing in agony. This witness already knew the accused No.2. In his cross-examination, he was asked as to why he had not taken down the complaint of Jamal when Jamal told him about the incident, and he stated that, as a constable, he had no powers to take down the FIR. Since the FIR was lodged at 3.45 p.m., as can be seen from exh.71, the aspect as to why Gigabhai did not file the FIR becomes insignificant. The injured was available for recording of the complaint and the PSI rightly recorded his complaint, as per exh.27, a copy of which was promptly forwarded to the Magistrate and received by the Magistrate at 17.45 p.m. on 27-11-1989. Gigabhai's evidence shows that Manu Mohan was also present at the spot where Jahangir was lying injured. He had called an auto-rickshaw and sent Jahangir, Jamal and Manubhai to the hospital. He has stated that he knew the accused No.2 - Tui since prior to the incident, because, there were several complaints filed against him in the police. The deposition of Gigabhai supports the prosecution version that the accused No.2 after injuring Jahangir and Jamal with knife, had run away in the direction of Jai Hind Talkies, and that Jamal was chasing him and Manu Mohan was also present at the scene of offence. From the fact that Gigabhai did not give information of a cognizable offence, it cannot be inferred that he had not seen the accused No.2 running away, as was sought to be suggested by the learned counsel.

11. We are, therefore, fully satisfied from the evidence on record that the prosecution has established that the accused No.2 had, at about 2.30 p.m. on 27-11-1989, given a knife blow to Jahangir on the left of his chest and a knife blow to Jamal on the left of his back.

12. The fact that these injuries were caused by knife is borne out from the medical evidence. Dr. Bharat K. Gadhvi, in his deposition exh.8, has stated that Jahangir's body was brought to him at 5.25 p.m. on 27-11-1989 for post mortem examination alongwith a `yadi' and an inquest report. He has proved the post mortem notes exh.9 and has stated that, in his opinion, death of Jahangir was caused because of the injury on his chest which was possible by a sharp cutting instrument like muddamal knife article 17. Under clause 17 of the post mortem report exh.9, he has noted down the injuries found on the dead body of Jahangir on post mortem, as follows :

[1] An incised wound 2.1/2" x 3/4" spindle shaped having acute angles and sharp margins in the 2nd intercostal space left side - 1" lateral to left sternal margin running obliquely upwards in the same space upto the left mid clavicular line cutting the underlying fascia and muscle in the same direction and dimensions causing 1" long transverse chip fracture of the left third rib in the lower part of its posterior surface just lateral to sternal border - cutting the pericardium in a sharp wound of 1" diameter and ending in the right atrium through a perforation in its amtero - superior aspect measuring 3/4" in diameter - dark clotted blood found in right atrium and pericardial cavity.

[2] An abrasion 1.1/2" x 1" over left side of left eyebrow - triangular in shape with its apex over the left side of forehead Brownish red in colour.

[3] An abrasion 2" x 3/4" over lateral aspect of left elbow - Brownish red in colour"

12.1 According to Dr. Gadhvi, on the same day at 3.00 p.m., Jamal was brought to him. Jamal had himself come to him as stated by him in paragraph 8 of his deposition. Jamal's brother Rahim had also accompanied him. Much

argument was made on this aspect of the matter. If Rahimbhai was present at the time when Dr. Gadhvi examined Jamal, it cannot be inferred that Jamal did not come with Jahangir and Manubhai in the auto-rickshaw, as stated by Jamal, Manubhai and Gigabhai. The doctor noted the following injuries on Jamal, as stated in his deposition as well as certificate exh.10 :

"An incised wound 1.1/4" x 1/4" over left side of back parallel to costal margin - spindle shaped muscle to bone deep - recent - having sharp margins and aute angles."

According to the Doctor, the injury on Jamal was possible by a sharp cutting instrument like muddamal article 17. In paragraph 7 of his deposition, he has stated that if the injury on Jamal had penetrated deeper, there was likelihood of its causing death of Jamal, because, vital parts of the body existed just below that injury. This part of evidence, in light of the other prosecution evidence, justifies the conviction of the accused No.2 for the offence under section 307 of the IPC so far as the injury caused by the accused No.2 to Jamal is concerned. The cross-examination in paragraph 8 of the deposition of Dr. Gadhvi itself suggests that the injury caused to Jahangir was such as would result in instantaneous death. The knife had penetrated the heart which is a vital organ. Dr. Gadhvi agreed with the suggestion that the blood circulation would totally stop in such injuries within a minute after continuous bleeding caused due to this injury. He has denied the suggestion that the injury found by him on Jahangir was not possible by muddamal article 17. The medical evidence, thus, fully corroborates the version of the eye witnesses.

13. The muddamal article 17 was discovered at the instance of the accused No.2, as has been established from the deposition exh.61 of the prosecution witness Ibrahim Mohammad and the panchnama exh.63. The contents of the panchnama exh.63 have been duly proved in the deposition of Ibrahim. As recorded in the panchnama exh.63, the accused No.2 - Tui alias Hussein Kasam Khatki had volunteered to show the muddamal knife and had led the panchas to a place near a brick-klin from where they walked to a hedge of a field, where he stopped and sat down at a place where there were 3 to 4 pieces of bricks which were removed and by his hand, the accused No.2 dug the earth and took out a big knife from a pit, which was seized under the said panchnama.

13.1 From the report of the chemical analyser at exh.18, it has been established that the muddamal article knife was found stained with human blood of both `A' and `B' groups. The blood group of Jahangir was `B', while that of Jamal was `A' and that explains why blood stains of both these groups were found on the knife with which the accused No.2 had given blows to Jahangir and Jamal at the time of the incident. The contention that the discovery of knife cannot be relied upon, because, the knife was found from an open place accessible to all, is misconceived. As noted above, the knife was hidden in a pit from which earth was removed after shifting the bricks which were placed thereon. As held by the Supreme Court in State of Himachal Pradesh v. Jeet Singh, reported in (1999) 4 SCC 370, there is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is `open or accessible to others'. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under section 27. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others. The evidence of discovery of the muddamal knife at the instance of the accused No.2 as well as the serologist's report showing the blood stains thereon of both blood groups `A' and `B' lends assurance to the version of the eye witnesses that the accused No.2 had inflicted a knife blow on the chest of Jahangir and immediately thereafter, on the left of the back of witness Jamal.

14. The question that now remains is, whether there was a criminal conspiracy for commission of this offence. On the aspect of conspiracy, the inland letter article 7 and the post-card article 8 constitute important part of evidence alongwith the deposition of Roshanbanu, widow of Jahangir, police constable Anil, who is said to have delivered the post-card article 8 to Jahangir on 27-10-1989 after it was given to him by the accused No.2

early in the morning after his duty hours for being delivered to Jahangir and the opinion of the handwriting expert which shows that the specimen writings taken of Sanjay Ghadi, a co-prisoner and the writings of the disputes inland letter article 7, were of the same person, and that the disputed writings in post-card article 8 were of the Accused No.1 - Hakudi, whose specimen writings copying that post-card were taken in the jail.

15. The prosecution version is that the muddamal article 7, inland letter was dictated by the accused No.1 - Hakudi to the co-prisoner Sanjay Ghadi. Sanjay Ghadi, in his deposition exh.33 flatly refused to have taken such dictation and disowned it to be in his handwriting. It was argued that, because Sanjay Ghadi disowns the handwriting of muddamal article 7, the story of the prosecution that the letter was dictated to him by the accused No.1 - Hakudi, falls to the ground. This submission is erroneous for the simple reason that it is established beyond any doubt that the handwriting of inland letter article 7 is that of Sanjay Ghadi. Merely because Sanjay Ghadi disowns that handwriting, the matter does not rest there. Expert evidence was precisely meant to find out whether in fact the inland letter was written in the hand of Sanjay Ghadi. Sanjay Ghadi even refused to have given any specimen writings which are at article 16. He was a graduate, doing law and involved in crimes. He has admitted that he was in the jail at the time when the accused No.1 - Hakudi was in jail. However, in the deposition of panch witness Yunus exh.34, it is clearly established that the specimen writings of Sanjay which are at article 16 being six copies of the inland letter article 7, were recorded in presence of the panch witnesses and the panchnama exh.35 was drawn in respect thereof. That panchnama exh.35 clearly shows that Sanjay, who was an under-trial prisoner in the jail, was shown the letter, of which he prepared six copies. Before the panchas, he had admitted that the inland letter Article 7 was written by him at the instance of the accused No.1. However, before the court, he denied having written that letter. Assuming that his statement before the panchas that the letter muddamal article 7, which he was required to copy before them, was written by him at the instance of the accused No.1 Hakudi alias Rafik Kasam Khatki though no statement of any of the accused in the present case, is not to be relied upon, the fact that the inland letter article 7, of which six copies were made in presence of panchas as per article 16, was in fact written by Sanjay Ghadi, is fully borne out from the expert evidence. The handwriting expert

Shri Jagdishbhai Jethabhai Patel, in his deposition exh.36 has categorically deposed that the inland letter, muddamal article 7 and the specimen writings article 16, which were of Sanjay Ghadi, were written by one and the same person. He has given his opinion at exh.44. The reasons for his opinion are also on record and they appear to be valid reasons. In the opinion of the handwriting expert at exh.44, it is stated that the disputed writings mark `N' (front and reverse), were written by the writer of specimen writings marked S1 to S6. It is, thus, established beyond any scope of doubt that the inland letter article 7 was in the handwriting of Sanjay Ghadi. The contents of that letter show that it was addressed to Jahangir by Hakudi. There was no reason for Sanjay to write such a letter of his own and it is obvious that the letter was written by Sanjay in his handwriting at the instance of the accused No.1 Hakudi who was a co-prisoner with him.

15.1 This letter article 7 purports to have been written on 26-10-1986. Below the date, day `Thursday' is written. In the date `26-10-1986', the year `1986' was an obvious mistake and it should be read as `1989'. On 26-10-1986, it was a Sunday, while on 26-10-1989, it was a Thursday, which day is written in the letter below the date. In this letter, Jahangir was informed that he had a month to live. It was written therein that, within 2 or 3 months, he would be killed by the writer, because, he has taken undue advantage of a poor person, who was peacefully doing his business, but was not allowed to do it. It was stated that Jahangir had harassed him so much and that he should now start counting his days from this date and would be killed before "26-12". It was stated that Jahangir may be feeling that he was a `Dada' (don) of Bombay, but nowadays, there was a `Dada' in every house. The tenor of this letter clearly shows that threat was given to Jahangir that he would be killed within a month or two. Name of Hakudi is written at the end of the letter. The fact that the accused No.1 Hakudi was at that time in jail, is not disputed. It was also written in the inland letter on the outer side that the case of Hakudi was to come up on the next date i.e. 27th in the Court, and that addressee i.e. Jahangir should come to the Court, because, he wanted to talk to him.

15.2 From the deposition of Chandravadan Joshi at exh.28, it transpires that he was working as Superintendent in the Amreli jail between 1986 and 1990. According to him, the accused No.1 was in Amreli jail between 15-10-1989 and 9-11-1989. Sanjay Chunilal Ghadi was also in jail between 22-7-1988 and 2-12-1989. Bavabhai was a sweeper from 1972. This witness has

proved the letter exh.29 supplying information to the police when asked for. He is not at all cross-examined. By the letter exh.29 which was written on 29-11-1989 to the police inspector, Amreli in respect of the information sought for the accused No.1 Hakudi alias Rafik Kasam Khatki by letter dated 28-11-1989, the Jail Superintendent had informed that the accused No.1 Hakudi was lodged in the jail on 15-10-1989 and was released on bail on 9-11-1989 on receiving the communication from the Chief Judicial Magistrate, Amreli. In paragraph 2 of that letter, it was stated that, during the said period, his case had come before the Chief Court on 27-10-1989 and 9-11-1989. The mention of this date 27-10-1989 as the date on which the case of the accused No.1 - Hakudi was to come up in Court points to the genuineness of the inland letter muddamal article 7 in which it was written that the case of Hakudi was to come up on the next date i.e. on 27th. Though muddamal article 7 bore the date 26-10-1986, it obviously was 26-10-1989, as noted above and paragraph 2 of the letter dated 29-10-1989 exh.29 of the Jail Superintendent, which mentions the date 27-10-1989 as the date of the hearing of the case of the accused No.1 in Court clearly supports the conclusion that the muddamal article 7, inland letter was written on 26-10-1989 and the year `1986' written in it was an obvious mistake.

16. Having written this letter article 7 through Sanjay Ghadi, the accused No.1 immediately wrote a post-card, muddamal article 8, perhaps realising that he ought not to have been so very explicit in giving the threat and that muddamal article 8 post-card was handed over in the early morning on 27-10-1989 to constable Anil for delivering it to Jahangir. In that post-card, muddamal article 8, the accused No.1 - Hakudi wrote to Jahangir that he had written the earlier letter in anger and that Jahangir should not feel bad, and that he should come with a surety in the court on the next date (i.e. 27-10-1989 when his case was fixed in the court as per the information reflected in the letter of the Superintendent at exh.29 dated 29-11-1989). It is, therefore, obvious that this letter was written on 26-10-1989 after the inland letter was already sent to Jahangir. In the post-card, it was further written that his work will not be done by anyone else other than Jahangir. Hakudi apologized from Jahangir and implored him to come to the Court on the next day i.e. on 27-10-1989, which date was specifically mentioned in the post-card.

16.1 The fact that this post-card was delivered to

Jahangir on 27-10-1989 by constable Anil is clearly established from his deposition at exh.31. He has stated that he knew the accused No.1 and on 26-10-1989, he was on duty from 18.00 hrs. upto 6 O'clock morning of 27-10-1989 at the sub-jail, Amreli. After his duty hours, when he was going home, the accused No.1 gave him the post-card, which he had read at that time and which was the muddamal article 8. Hakudi told him that he should deliver that post-card to Jahangir who was staying on Hari road. This witness had read that post-card and has identified the muddamal article 8 post-card as that post-card. He has stated that, while returning home from his duty, he had delivered this post-card on his way, at the house of Jahangir. He had pressed the call bell and Jahangir had come down and he gave the post-card to him and told him that it was given by Hakudi and that he should make an arrangement for his surety. The counsel attacked this witness on the ground that a man with a long standing service was acting contrary to the jail rules and regulations by smuggling out a post-card when all the post written by the prisoners was required to be censored through the jail authorities. The fact that he might have committed some violation of the jail instructions is not an issue in the present proceedings. On the contrary, the fact that this witness who was fully aware that it was a misconduct to have taken the post-card, has stood by the truth by saying that he did take the post-card to Jahangir from Hakudi shows that, irrespective of the harm that would be caused to him by telling the truth, he has admitted having delivered the post card to Jahangir. The fact that he may have committed misconduct by carrying the post-card will not nullify his deposition to the effect that he did take Hakudi's post-card muddamal article 8 to Jahangir. We are fully satisfied from his deposition that the muddamal article 8 post-card was given to him by the accused No.1 - Hakudi in the morning of 27th October 1989 around 6 O'clock when he was leaving after his duty hours for his home, for being delivered to Jahangir, and that on his way home, he did deliver the post-card in that morning to Jahangir. The urgency of delivering the post-card was writ large, because, the case of the accused No.1 Hakudi was to come up before the Chief Judicial Magistrate on 27-10-1989, and that Jahangir had to provide for a surety.

17. The P.S.I. Chauhan, in his deposition exh.74, has stated that the specimen writings article 15 (S7 to S12) were taken by him in presence of panchas from the accused No.1 - Hakudi under the panchnama exh.76 and there is absolutely no reason to doubt his version on

this aspect. As per the opinion of the handwriting expert at exh.44, the disputed writings mark `N-1', which was in the post-card (front and reverse) and encircled red, were written by the writer of the specimen writings mark S7 to S12 which were of the accused No.1 - Hakudi, who was asked to copy the post-card by the P.S.I. for collecting his specimen writings. The fact that, in the post card, the accused No.1 - Hakudi apologized and tried to retract from the threat which he had given in the earlier letter, should not be taken on its face value in view of the developments that took place. The accused No.1, after being released on bail on 9-11-1989, had visited the house of Jahangir. In the deposition of Roshanbanu at exh.32, it has been stated by her that, on the day of the incident, someone rang the call-bell of their house and her husband had peeped out asking who it was and then told her that Hakudi was calling him. He told her that he would go and buy vegetables and since Hakudi was quarreling with him, he would try to settle the dispute. This witness identified the accused No.1 Hakudi in the Court. According to her, she had seen Hakudi once earlier. Her husband had sent vegetables through one boy. Thereafter, at about 3 O'clock, someone informed her that her husband was injured by a knife blow given by the accused No.2 - Husein Kasam alias Tui in Baharpura and was taken to the hospital. She, therefore, alongwith her husband's cousin brother Sadru, went to the hospital. Her husband's body was in the post mortem room and there was a big knife blow on the left side of his chest. He was declared dead by the doctor. Manu Mohan had told her at that time about the incident. She has also spoken about the letters, muddamal articles 7 and 8. She has stated that these two letters were received by her husband and he had read over them to her. She told him to file a complaint, but he said that he would get the dispute settled by involving some leaders of the community and calling Hakudi's mother. Thereafter, she had kept these two letters in a suitcase. After she returned at about 7.30 p.m. from the hospital, the police had come at about 8.00 p.m. and she produced these two letters before the police. This part of the prosecution evidence totally rules out any scope of concoction of these two letters by the prosecution, as was sought to be suggested on behalf of the accused persons. This witness has also stated that, prior to the incident, when Hakudi had come to her house, he had asked for Rs.1,000=00 from her husband, which her husband had refused to give. Thereafter, Hakudi was in jail and her husband had told that Hakudi was accusing him that he was jailed because of him, and therefore, he should get him released on bail. Her husband however did not have any

property and therefore, he did not go to the court for getting him released on bail. It is, therefore, obvious that when Jahangir did not respond to the accused No.1 Hakudi asking him to come to the Court and get him released on bail, the anger which was simmering in his mind as reflected in muddamal article 7, would have come to surface. Witness Roshanbanu has stated that, about a fortnight prior to the incident, she had seen Hakudi when he had come to their house, though she had not talked to him. He had talked with her husband. On that day, her husband had spoken for the first time about Hakudi to her. Thereafter, as noted above, on the day of the incident, Hakudi came to their house and called Jahangir and Jahangir, while going alongwith him, told Roshanbanu that he wanted to sort out the dispute by involving the leaders of the community, and that Hakudi was quarrelling with him, which fact shows that even on that day, Jahangir feared Hakudi, which fear must be based on what Hakudi would have told him and on the conduct of Hakudi towards him. Soon thereafter, Jahangir was attacked by the brother of Hakudi i.e. the accused No.2 with a knife and was done to death. The prosecution has, therefore, established a complete link of facts and circumstances which would point to one and the only conclusion that it was as a result of the conspiracy masterminded by the accused No.1 - Hakudi after he expressed his intention to kill Jahangir in the inland letter, muddamal article 7, the accused No.2, who was his brother, executed the plan by attacking Jahangir with a knife and giving him a fatal blow, which pierced his heart and caused his immediate death. We therefore find that the prosecution has established beyond any reasonable doubt that the accused No.1 - Hakudi, though not present at the time when the incident occurred, was guilty of the offence under section 302 read with section 120-B of the IPC in respect of the murder of Jahangir and therefore, has been rightly convicted and sentenced for that offence by the trial Court. We are also fully satisfied from the evidence on record that the accused No.2 individually committed the offence under section 302 of the IPC by intentionally causing death of Jahangir by giving him knife blow, which pierced his heart. Having regard to the length of the plate of the knife as well as the force with which the injury was caused and the seat of injury which resulted in penetration of the heart, it is obvious that the accused No.2 had inflicted the blow with the intention of causing death of Jahangir. In the charge, it was specifically alleged that the accused No.2 had inflicted the knife blow on Jahangir on his chest and caused the fatal injury and therefore, he could be validly convicted for the offence under section 302 of the IPC though the

charge was composite under section 302 read with section 120-B of the IPC against both the accused persons. In other words, no prejudice has been caused to the accused No.2 by non-mention of a separate charge under section 302 when a specific charge was in fact made alleging that the death of Jahangir Abdulla was intentionally caused by the accused No.2 giving a knife blow on his chest. The charge under section 307 against the accused No.2 in respect of the knife blow which was inflicted by him on Jamal which could have caused death of Jamal, if it had penetrated a little further as deposed to by the doctor, is also established and the trial Court has rightly convicted and sentenced him also for the offence under section 302 of the Indian Penal Code. The charge under section 135 of the Bombay Police Act read with section 120-B is established and the conviction for that offence does not call for any interference either.

17. For the above reasons, we are in full agreement with the reasoning and findings of the trial Court and we, therefore, dismiss this appeal.

[R.K.ABICHANDANI, J.]

[SHARAD D. DAVE, J.]

parmar*